

General Assembly

Raised Bill No. 5494

February Session, 2010

LCO No. 2280

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Referred to Committee on Finance, Revenue and Bonding

Introduced by: (FIN)

AN ACT CONCERNING VARIOUS CHANGES TO TITLE 12.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- Section 1. (NEW) (*Effective from passage and applicable to income years commencing on or after January 1, 2010*) (a) As used in this section:
- (1) "Captive real estate investment trust" or "captive REIT" means any real estate investment trust, as defined in Section 856 of the Internal Revenue Code, the shares or beneficial interests of which are not regularly traded on an established securities market and more than fifty per cent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, or constructively, by a related member.
- 10 (2) "Related member" means a person that, with respect to the 11 taxpayer during all or any portion of the income year, is: (A) A related 12 entity, (B) a component member, as defined in Section 1563(b) of the 13 Internal Revenue Code, (C) a person to, or from whom, there is 14 attribution of stock ownership in accordance with Section 1563(e) of 15 the Internal Revenue Code, other than a statutory business trust of 16 which each beneficiary is not a related entity to the taxpayer, or (D) a

person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in subparagraphs (A) to (C), inclusive, of this subdivision.

- (3) "Related entity" means (A) a stockholder who is an individual, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock; or (C) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty per cent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.
- of the general statutes, a corporation shall add back all otherwise deductible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, a captive real estate investment trust. Such expenses and costs shall be added back before net income is apportioned, as provided in chapter 208 of the general statutes.
 - (c) Nothing in this section shall be construed to require a corporation to add to its net income more than once any amount of otherwise deductible expenses and costs directly or indirectly paid,

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- accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, a captive real estate
- 51 investment trust.

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- (d) Nothing in this section shall be construed to limit or negate the commissioner's authority to enter into agreements and compromises otherwise allowed by law.
- (e) Nothing in this section shall be construed to limit or negate the commissioner's authority to make adjustments under section 12-221a or 12-226a of the general statutes.
- Sec. 2. Subdivision (1) of subsection (f) of section 12-7b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):
 - (f) (1) The Office of Fiscal Analysis shall not make known in any manner any information obtained from any such report or inventory, or any information obtained pursuant to subdivision (2) of this subsection which would allow the identification of any taxpayer or of the amount or source of income, profits, losses, expenditures or any particulars thereof set forth or disclosed in any return, statement or report required to be filed with or submitted to the commissioner which is discernible from such report or inventory, or from such information obtained pursuant to subdivision [(d)] (2) of this subsection, except as provided in this subsection. The Office of Fiscal Analysis may disclose such information to other state officers and employees when required in the course of duty. No such officer or employee shall make known any such information to any other person except as provided in this subsection. Any person who violates any provision of this subsection shall be fined not more than one thousand dollars or imprisoned not more than one year or both.
- Sec. 3. Subdivision (1) of subsection (b) of section 12-226 of the general statutes is repealed and the following is substituted in lieu

thereof (Effective from passage for income years commencing on or after January 1, 2010):

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(b) (1) Any company [whose return to the Director of Internal Revenue has been amended shall, within ninety days after having filed the amended return, make an amended return to the commissioner filing an amended return with any official of the United States government or any agency thereof, shall, on or before the date that is ninety days after the final determination is made on the amended return by such federal official or agency, make an amended return to the commissioner. The commissioner shall treat any such amended return reporting a tax overpayment as filed in processible form, as described in subsection (c) of section 12-227, after proof of such final determination on such amended federal return by such federal official or agency is submitted to the commissioner. The time for filing such amended return may be extended by the commissioner upon due cause shown. If, upon examination, the commissioner finds that the company is liable for the payment of an additional tax, he shall, within a reasonable time from the receipt of such amended return, notify the company of the amount of such additional tax, together with interest thereon computed at the rate of one per cent per month or fraction thereof from the date when the original tax became due and payable. Within thirty days of the mailing of such notice, the company shall pay to the commissioner, in cash or by check, draft or money order, drawn to the order of the Commissioner of Revenue Services, the amount of such additional tax and interest. If, upon examination of such amended return and related information, the commissioner finds that the company has overpaid the tax due the state and has not received from or been allowed by the United States government, or any agency thereof, a credit or a benefit, as a deduction or otherwise, for or by reason of such overpayment, the company shall be paid by the State Treasurer, upon order of the Comptroller, the amount of such overpayment. If the commissioner determines that the company's claim of overpayment is not valid, either in whole or in part, he shall mail notice of the proposed disallowance in whole or in part of the

claim to the company, which notice shall set forth briefly the commissioner's findings of fact and the basis of disallowance in each case decided in whole or in part adversely to the claimant. Sixty days after the date on which it is mailed, a notice of proposed disallowance shall constitute a final disallowance except only for such amounts as to which the company has filed, as provided in subdivision (2) of this subsection, a written protest with the commissioner.

- Sec. 4. Section 12-409 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July* 1, 2010):
- [(1)] (a) No person shall engage in or transact business as a seller within this state, unless a permit or permits have been issued to [him] such person as hereinafter prescribed.
 - [(2)] (b) Every person desiring to engage in or conduct business as a seller within this state shall file with the commissioner an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of [his] the applicant's place or places of business and such other information as the commissioner requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.
 - [(3)] (c) At the time of making an application the applicant shall pay to the Commissioner of Revenue Services a permit fee of one hundred dollars for each permit. Any permit issued on or after July 1, 1985, but prior to October 1, 2003, shall expire biennially on the anniversary date of the issuance of such permit unless renewed in accordance with such procedure and application form as prescribed by the commissioner. Any permit issued on or after October 1, 2003, shall expire on the fifth anniversary date of the issuance of such permit unless renewed in

accordance with such procedure and application form as prescribed by the commissioner.

- [(4)] (d) After compliance with subsections [(1), (2) and (3)] (a), (b) and (c) of this section by the applicant, the commissioner shall grant and issue to such applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued. Only a person actively engaging in or conducting business as a seller may hold a permit. Any person not so engaged shall surrender the permit to the commissioner for cancellation.
- [(5)] (e) A seller whose permit has been suspended or revoked shall pay to the Commissioner of Revenue Services a fee of one hundred dollars for the reissuance of a permit.
 - [(6)] (f) Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any regulation of the commissioner relating to the sales tax prescribed and adopted under this chapter, [or whenever any seller files returns for four successive monthly or quarterly periods, as the case may be, showing no sales,] the commissioner, upon hearing, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring [him] such person to show cause why [his] such person's permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by registered or certified mail. The commissioner shall not issue a new permit after the revocation of a permit unless [he] the commissioner is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the regulations of the commissioner.
 - (g) Whenever any seller files returns for four successive monthly or quarterly periods, or for two successive annual periods, as the case

may be, showing no sales, the commissioner, upon hearing, after giving such seller thirty days notice, in writing, specifying the time and place of hearing and requiring such seller to show cause why such seller's permit or permits should not be cancelled, may cancel one or more of the permits held by such seller. The notice may be served personally or by mail. The commissioner shall not issue a new permit after the cancellation of a permit unless the commissioner is satisfied that the former holder of the permit will make sales subject to the provisions of this chapter relating to the sales tax and the regulations of the commissioner.

- [(7)] (h) Any person who knowingly violates any provision of this section shall be fined not more than five hundred dollars or imprisoned not more than three months or both for each offense.
- 191 Sec. 5. Section 12-484 of the general statutes is repealed and the 192 following is substituted in lieu thereof (*Effective July 1, 2010, and applicable to quarterly periods commencing on or after January 1, 2011*):
 - (a) Except as otherwise provided in this section, every motor carrier subject to the tax imposed by this chapter shall, on or before the last day of January, April, July and October, annually, [or on or before the last day of the month following such reporting period, other than a quarterly period as may be established under regulations promulgated by the Commissioner of Revenue Services,] make to the commissioner such reports of its operations during the quarter [or such other period, as the case may be,] ending the last day of the preceding month as the commissioner may require and such other reports from time to time as the commissioner may deem necessary. [The commissioner shall adopt in accordance with chapter 54 and enforce regulations relating to the administration and enforcement of this chapter.]
 - (b) The commissioner [by regulation may] shall exempt from the [aforesaid] reporting requirements of subsection (a) of this section, [as a class, (1)] those motor carriers operating solely within this state and [(2) those motor carriers] purchasing motor fuel solely within this

- 210 state. [, and require in each such instance an annual report, if in his
- 211 discretion the enforcement of this chapter would not be adversely
- 212 affected by such regulation.]
- 213 (c) The commissioner shall adopt regulations in accordance with the
- 214 provisions of chapter 54 relating to the administration and
- 215 <u>enforcement of this chapter.</u>
- Sec. 6. Subsection (a) of section 12-631 of the general statutes is
- 217 repealed and the following is substituted in lieu thereof (*Effective from*
- 218 passage and applicable to income years commencing on or after January 1,
- 219 2010):
- 220 (a) "Business firm" means any business entity authorized to do
- 221 business in the state and subject to the [corporation business tax
- 222 imposed under chapter 208 or to the unincorporated business tax
- imposed under chapter 228, or any insurance company, hospital or
- 224 medical services corporation subject to the insurance companies,
- 225 hospital and medical services corporations tax imposed under chapter
- 226 207, or any air carrier subject to the air carriers tax imposed under
- 227 chapter 209, or any railroad company subject to the railroad companies
- 228 tax imposed under chapter 210, or any express, telegraph, telephone,
- cable, car or community antenna television company subject to the
- 230 express, telegraph, telephone, cable, car and community antenna
- 231 television companies tax imposed under chapter 211, or any utility
- company subject to the utility companies tax imposed under chapter
- 233 212, or any public service company subject to the public service
- 234 companies tax imposed under chapter 212a] tax due under the
- 235 provisions of chapter 207, 208, 209, 210, 211 or 212.
- Sec. 7. Subsection (c) of section 12-632 of the general statutes is
- 237 repealed and the following is substituted in lieu thereof (Effective July
- 238 1, 2010):
- 239 (c) Any business firm which desires to engage in any of the activities
- or programs approved by any municipality pursuant to subsection (a)

241 of this section and listed pursuant to subsection (b) of this section may 242 apply to the Commissioner of Revenue Services for a tax credit in an 243 amount as provided in section 12-633, 12-634, 12-635 or 12-635a, as 244 amended by this act. The proposal for such credit which shall be made on a form prescribed and made available by the commissioner, shall 245 246 set forth the program to be conducted, the neighborhood area to be 247 invested in, the plans for implementing the program and such other information as said commissioner may prescribe. Such proposals shall 248 249 be submitted to the commissioner on or after September fifteenth but 250 no later than October first of each year. [The commissioner shall refer 251 the proposal to the agency designated by the municipality to oversee 252 implementation of the program pursuant to the provisions of 253 subsection (a) of this section, and such agency shall, within thirty days 254 of the date of referral, approve or disapprove the proposal. Failure of 255 such agency to respond within thirty days of the date of referral shall 256 be deemed to constitute disapproval of such proposal. Following such 257 referral and approval or disapproval, such Such proposals shall be 258 approved or disapproved by the Commissioner of Revenue Services 259 based on the compliance of such proposal with the provisions of this 260 chapter [, municipal agency approval or disapproval] and regulations 261 adopted pursuant to this chapter. The commissioner may only approve 262 proposals received [in his office] between September fifteenth and 263 October first of each year. [, after approval by the municipal agency 264 affected by such proposal.] If, in the opinion of the Commissioner of 265 Revenue Services, [and the municipality or municipalities affected,] a 266 business firm's investment can, for the purposes of this chapter, be 267 made through contributions to a neighborhood organization as 268 defined in subsection (h) of section 12-631, tax credits may be allowed 269 in amounts as provided in section 12-633, 12-634, 12-635 or 12-635a, as 270 amended by this act.

- 271 Sec. 8. Section 12-635a of the general statutes is repealed and the 272 following is substituted in lieu thereof (*Effective from passage*):
- 273 The Commissioner of Revenue Services shall grant a credit against

- any tax due under the provisions of chapter 207, 208, 209, 210, 211 or 212 in an amount not to exceed [forty] sixty per cent of the total cash amount invested during the taxable year by the business firm in community-based alcoholism prevention or treatment programs operated or created pursuant to proposals approved pursuant to section 12-632, as amended by this act.
- Sec. 9. Section 12-686 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):
 - (a) (1) Except as otherwise provided in [subsection (b)] <u>subsections</u> (b) and (c) of this section, the commissioner may require every person who files a tax return for any tax on a monthly or quarterly basis to pay such tax during the twelve-month period following a determination of liability under this subdivision by one of the means of electronic funds transfer approved by the department, if the commissioner determines that such person's liability for such tax was [more than ten] four thousand dollars or more for the twelve-month period ending on the June thirtieth immediately preceding the monthly or quarterly period with respect to which the requirement to pay tax by electronic funds transfer is established. The commissioner, in determining whether tax liability is [more than ten] four thousand dollars or more, shall base such determination on the taxes reported to be due on the tax returns of such person related to the period under examination. If any tax return or returns of such person for such period have not been filed, the commissioner may base such determination on any information available [him] to such commissioner.
 - (2) Except as otherwise provided in [subsection (b)] <u>subsections (b)</u> and (c) of this section, the commissioner may require every person, other than a person described in subdivision (3) of this subsection, who files a tax return for any tax on an annual basis to pay such tax, or any installment thereof, during the twelve-month period following a determination of liability under this subdivision by one of the means

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of electronic funds transfer approved by the department if the commissioner determines that such person's liability for such tax was [more than ten] <u>four</u> thousand dollars <u>or more</u> for the year immediately preceding the year with respect to which the requirement to pay tax by electronic funds transfer is established. The commissioner, in determining whether tax liability is [more than ten] <u>four</u> thousand dollars <u>or more</u>, may base the determination on the estimated tax, if any, paid for the immediately preceding year, provided, if the tax return for such immediately preceding year has been filed, the commissioner shall base the determination on the taxes reported to be due on such tax return. If any tax return of such person for such period has not been filed or estimated tax has not been paid by such person for such period, the commissioner may base such determination on any information available to [him] <u>the commissioner</u>.

(3) Except as otherwise provided in [subsection (b)] subsections (b) and (c) of this section, the commissioner may require every employer who is deducting and withholding Connecticut income tax from employee wages to pay such tax during the twelve-month period following a determination of liability under this subdivision, by one of the means of electronic funds transfer approved by the department if the commissioner determines that the amount of Connecticut income tax deducted and withheld from employee wages by such employer was more than [ten] two thousand dollars for the twelve-month period ending on the June thirtieth immediately preceding the quarterly period with respect to which the requirement to pay over tax by electronic funds transfer is established. The commissioner, in determining whether tax liability is more than [ten] two thousand dollars, shall base such determination on the taxes reported to be due on the quarterly withholding tax returns of such employer related to the period under examination. If any such tax return of such person for such period has not been filed, the commissioner may base such determination on any information available to [him] the commissioner.

(b) Notwithstanding any provision of subsection (a) of this section:

- (1) No person shall be required to pay any tax by electronic funds transfer until the department has given notice to such person of such requirement; and (2) no person required to pay any tax for any period by electronic funds transfer shall cease such method of payment until notified by the department that such method of payment is no longer required. The department shall give notice to such person that such method of payment is no longer required as soon as practicable after such determination is made.
 - (c) Notwithstanding any provision of subsection (a) of this section, any person required by regulations adopted under section 12-690 to file electronically any return, statement or other document that is required by law or regulation to be filed with the commissioner shall be required to pay the tax to which such return, statement or other document pertains by electronic funds transfer. For purposes of this subsection, any person required by regulations adopted under section 12-690 shall not include any return preparer, as defined in such regulation.
 - Sec. 10. Subdivision (2) of subsection (b) of section 12-704 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2010*):
 - (2) If, as a direct result of a taxpayer filing an amended income tax return with another state of the United States or a political subdivision thereof or the District of Columbia, the amount of tax of such other jurisdiction that the taxpayer is required to pay is different from the amount used to determine the credit allowed to any taxpayer under this section for any taxable year, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety days after the [date of filing of such amended return] final determination is made on such amended return by the tax officers or other competent authority of such other jurisdiction, an amended return under this chapter and shall give such information as the

- commissioner may require. Any such amended return under this chapter reporting a tax overpayment shall be treated as containing sufficient required information after proof of such final determination on such amended income tax return of such other jurisdiction by the tax officers or other competent authority of such other jurisdiction is submitted to the commissioner. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax for any taxable year affected, regardless of any otherwise applicable statute of limitations.
- Sec. 11. Subdivision (2) of subsection (b) of section 12-727 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2010*):
 - (2) Any taxpayer filing an amended federal income tax return with the United States Internal Revenue Service or other competent authority shall also file, on or before the date that is ninety days after the [date of filing of such amended return] final determination is made on such amended return by the Internal Revenue Service or other competent authority, an amended return under this chapter and shall give such information as the commissioner may require. Any such amended return under this chapter reporting a tax overpayment shall be treated as containing sufficient required information after proof of such final determination on such amended federal income tax return by the Internal Revenue Service or other competent authority is submitted to the commissioner. The commissioner may redetermine, and the taxpayer shall be required to pay the tax for any taxable year affected, regardless of any otherwise applicable statute of limitations.
- Sec. 12. Section 32-340 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):
- Sections 32-340 to 32-346, inclusive, <u>as amended by this act</u>, and [sections 12-3f and] <u>section</u> 12-2170 shall be known and may be cited as the "Small Business Financial Recovery Act of 1993".

Sec. 13. Sections 12-3f, 12-34d and 12-315a of the general statutes are repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	from passage and applicable to income years commencing on or after January 1, 2010	New section
Sec. 2	from passage	12-7b(f)(1)
Sec. 3	from passage for income years commencing on or after January 1, 2010	12-226(b)(1)
Sec. 4	July 1, 2010	12-409
Sec. 5	July 1, 2010, and applicable to quarterly periods commencing on or after January 1, 2011	12-484
Sec. 6	from passage and applicable to income years commencing on or after January 1, 2010	12-631(a)
Sec. 7	July 1, 2010	12-632(c)
Sec. 8	from passage	12-635a
Sec. 9	July 1, 2010	12-686
Sec. 10	from passage and applicable to taxable years commencing on or after January 1, 2010	12-704(b)(2)
Sec. 11	from passage and applicable to taxable years commencing on or after January 1, 2010	12-727(b)(2)
Sec. 12	from passage	32-340
Sec. 13	from passage	Repealer section

Statement of Purpose:

To make various clarifying changes to Title 12 of the general statutes, including (1) disallowing expenses paid to a captive REIT as a deduction, (2) requiring receipt by the Department of Revenue

Services of a processible return prior to any determination of interest on an overpayment of taxes, (3) allowing notice of cancellation of sales tax permit to be sent by regular mail, (4) exempting in-state motor carriers only from filing a certain quarterly statement, (5) making procedural and technical changes to the Neighborhood Assistance Act, (6) imposing the requirement of electronically paying taxes at a lower threshold of tax liability, and (7) repealing three obsolete sections.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]